

# United States Senate

WASHINGTON, DC 20510

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June 7, 2016

The Honorable Thomas Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Dear Chairman Wheeler,

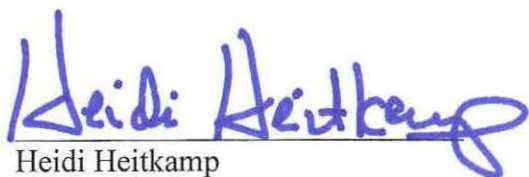
We write regarding the Federal Communications Commission's (FCC) recently proposed rule, *The Competitive Availability of Navigation Devices*. While your efforts to support competitive environments in the telecommunications industry and support for innovation are important, we are concerned there is not a publicly available cost benefit analysis for this rule. This rule has the potential for significant impact on all multichannel video programming distributors (MVPD), particularly small MVPDs, and could negatively affect customers across the nation.

A formal cost benefit analysis is an effective way for an agency to demonstrate the case in favor of a new rule by showing that expected benefits, both qualitative and quantitative, outweigh expected costs. Such analysis has also been a helpful tool to allow the general public to stay informed of the decisions a federal agency makes regarding proposed regulations. We understand that, given the FCC's independent regulatory status, your commission does not have to submit formal cost benefit analysis to the Office of Information and Regulatory Affairs as traditional executive agencies do. However, it is worth noting that independent regulatory agencies often choose to closely examine and consider costs and benefits when developing a rule.

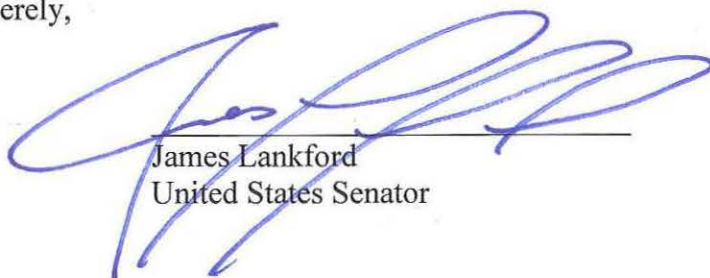
We have heard from a number of small MVPDs in our states who have voiced their concern over this rule. As you know, small MVPDs often do not make a significant profit from providing video services to their customers, many of whom already purchase their internet and landline telephone services from the cable providers. For these smaller MVPDs, making up for stranded investments and accounting for new compliance efforts can force them to end the distribution of video services to their customers. This is most problematic in rural areas where a consumer may have no other option for their video service. An open and detailed examination of costs and benefits associated with this rule would hopefully demonstrate that such worries are unfounded.

We urge you to consider qualitative and quantitative costs and benefits during this rulemaking process and commit to include, in the publication of the final rule, analysis of the impact of this rule on small MVPDs and how allowing third-party access to the program encryption, would improve consumer choice. Thank you for your attention to this matter, and we look forward to hearing from you.

Sincerely,



Heidi Heitkamp  
United States Senator



James Lankford  
United States Senator



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 11, 2016

The Honorable Heidi Heitkamp  
United States Senate  
110 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Heitkamp:

Thank you very much for your letter sharing your views about cost-benefit analysis in the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace and how this proceeding might impact small pay-TV providers. I take your input on these issue seriously and assure you that it will receive careful consideration.

Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. Yet, unfortunately, the statutory mandate in section 629 is not yet fulfilled. The lack of competition in this market has meant few choices and high prices for consumers. One of the main contributing factors to these high prices is the no-option, add-on fee for set-top box rental that is included on every bill, forcing consumers to spend, on average, \$231 in rental fees annually. Even worse, a recent congressional investigation found that the price of most equipment fees is determined by what the market will bear, and not the actual cost of the equipment.<sup>1</sup> With the lack of competition in this market, it should come as little surprise that fees for set-top boxes continue to rise.<sup>2</sup> Clearly, consumers deserve better.

This February the Commission put out for public comment a proposal that would fulfill the statutory requirement of competitive choice for consumers. This action opened a fact-finding dialog to build a record upon which to base any final decisions. Our record already contains more than 280,000 filings, the overwhelming majority of which come from individual consumers. FCC staff is actively engaged in constructive conversations with all stakeholders—content creators, minority and independent programmers, public interest and consumer groups, device manufacturers and app developers, software security developers, and pay-TV providers of all sizes—on how to ensure that consumers have the competition and choice they deserve. I am hopeful that these discussions will yield straight-forward, feasible and effective rules for all.

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<sup>1</sup> U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE, MINORITY STAFF REPORT, *INSIDE THE BOX: CUSTOMER SERVICE AND BILLING PRACTICES IN THE CABLE AND SATELLITE INDUSTRY*, 17 (Jun. 23, 2016).

<sup>2</sup> One recent analysis found that the cost of cable set-top boxes has risen 185 percent since 1994 while the cost of computers, television and mobile phones has dropped by 90 percent during that same time period.

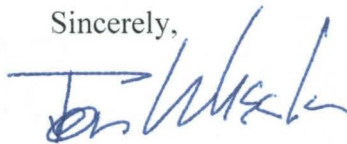


You shared your views about the benefits of cost benefit analysis in our proceeding. I agree that a cost-benefit analysis is a valuable tool that can assist in the evaluation of a proposed regulatory course of action. Since President Obama issued Executive Orders 13563 and 13579 in 2011, the Commission has endeavored to act consistently with the cost-benefit analysis principles articulated in those orders in its rulemaking proceedings. This includes consideration of quantifiable, monetized costs and benefits associated with a proposed regulatory approach, as well as careful consideration of those costs and benefits that are not as easily quantifiable or monetized. As we build our record in this proceeding, we will continue to conduct this proceeding following the same principles and guidelines.

You also expressed your views about the potential impacts of this proceeding on small pay-TV providers. I share your goal of ensuring that pay-TV subscribers in all parts of our country can enjoy the benefits of consumer choice without unduly burdening small providers of pay-TV. Recognizing the important role that small pay-TV providers play in many rural communities, the Notice of Proposed Rulemaking (NPRM) adopted in February seeks comment on how this proceeding could affect these providers. Notably, the NPRM proposes to exempt all analog cable systems from new requirements while also seeking comment on the American Cable Association's proposal to exempt all pay-TV providers serving one million or fewer subscribers from any rules. The NPRM further asks how the Commission can ensure that any rules adopted are not overly burdensome to pay-TV providers. We are continuing to engage with all stakeholders on this issue, including small pay-TV providers. Customers of MVPDs of all sizes deserve choice and innovation, and I am confident that we will be able to find a balance that accurately reflects the technology and resources available to truly small providers.

The rich record we are developing will help us avoid overburdening small pay-TV providers while delivering American consumers meaningful choice. Thank you for your engagement in this proceeding, and I look forward to continuing to work with you on this important consumer issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized, cursive script.

Tom Wheeler



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OFFICE OF  
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July 11, 2016

The Honorable James Lankford  
United States Senate  
316 Hart Senate Office Building  
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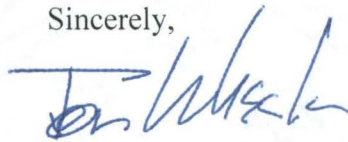


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